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3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF WASHINGTON  
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6 UNITED STATES OF AMERICA, )  
7 ) No. CR-08-032-JLQ  
8 Plaintiff, )  
9 vs. ) MEMORANDUM OPINION;  
10 RONALD L. SMITH, ) SENTENCING FINDINGS OF  
11 Defendant. ) FACT AND CONCLUSIONS OF  
OF LAW

12 This matter came regularly on for sentencing on Friday, the 5th day of September,  
13 2008. The Defendant appeared in person in custody and with his attorney Amy Rubin,  
14 Assistant Federal Defender. The Government was represented by Timothy J. Ohms,  
15 Assistant United States Attorney. Present was Michael L. Northcutt, Alcohol, Tobacco,  
16 and Firearms Agent, who was sworn and testified. United States Probation Officer  
17 Wayne Becker was also present.

18 **OFFENSE LEVEL COMPUTATIONS**

19 The Defendant has previously pled guilty to being a felon in possession of a  
20 firearm in violation of 18 U.S.C. § 922(g)(1).

21 The Presentence Report, at ¶ 22 computed the base Offense Level at a Level 20  
22 by reason of the Defendant having been previously convicted of a crime of violence.  
23 U.S.S.G. § 2K2.1. Application Note 1 provides that a “‘Crime of violence’ has the  
24 meaning given that term in §4B1.2(a) and Application Note 1” of the Commentary to  
25 §4B1.2.” Section 4B1.2 defines a “crime of violence” as being a felony which “has as  
26 an element the use, attempted use, or threatened use of physical force against the person  
27 of another, or (b) . . . involves conduct that presents a serious potential risk of physical

1 injury to another.”

2 As established in Sentencing Exhibit # 1, the Defendant pled guilty and was  
3 sentenced in Spokane County Superior Court on October 9, 2001 to the felony crime of  
4 Harassment under an Information charging that the Defendant:

5 did, without lawful authority, knowingly threaten to cause bodily injury in the  
6 future by threatening to kill TAWNY JOHNSON or any other person, and the  
7 defendant’s words or conduct placed TAWNY JOHNSON in reasonable fear that  
8 the threat would be carried out.

9 The Statement of Defendant On Plea Of Guilty set forth that the elements of the  
10 offense were “Set forth in the Information.” The Statement at ¶ 11 included the provision  
11 that “Instead of making a statement, I agree that the court may review the police reports  
12 and/or a statement of probable cause supplied by the prosecution to establish a factual  
13 basis for the plea.” The foregoing Information and the police report attached thereto in  
14 Sentencing Exhibits # 1 and # 2 clearly establish that the Harassment conviction  
15 constituted a crime of violence and therefore the initial Offense Level herein was a Level  
16 20.

17 The Presentence Report, at ¶s 23 and 24 recommended a 2 level increase by reason  
18 of the firearms being stolen pursuant to U.S.S.G. § 2K2.1(b)(4) and an additional 4 level  
19 increase by reason of the firearms being possessed in connection with another felony  
20 offense (residential burglary). The testimony of Agent Northcutt clearly established that  
21 the Defendant burglarized the home of James Darrell Logue in Medical Lake, Washington  
22 and stole the firearms from a gun cabinet after breaking the glass with a computer printer.  
23 The Defendant then fled with the firearms and pawned them at a Spokane shop. These  
24 facts clearly established the valid basis for the 2 and 4 level increases resulting in a total  
25 Offense Level of 26. With a 2 level reduction for acceptance for responsibility and a 1  
26 level decrease for the timely entry of a plea, the final Offense Level was determined by  
27 the court to be Level 23.

**CRIMINAL HISTORY & GUIDELINE CALCULATION**

The Defendant's criminal history is filled with assaultive type of convictions with total Criminal History points of 22. A person with 13 or more Criminal History points is placed in the highest Criminal History Category of VI. This resulted in a Sentencing Guideline range of 92-115 months.

**THE PLEA AGREEMENT AND SENTENCE**

The Plea Agreement entered into by the parties at ¶ 2 provides in part as follows:

2. The Court is Not a Party to the Agreement:

The Court is not a party to this Agreement and may accept or reject this Plea Agreement. Sentencing is a matter that is solely within the discretion of the Court. The Defendant understands that the Court is under no obligation to accept any recommendations made by the United States and/or by the Defendant; that the Court will obtain an independent report and sentencing recommendation from the U. S. Probation Office; and that the Court, may in its discretion, impose any sentence it deems appropriate up to the statutory maximums stated in this Plea Agreement.

The same ¶ 2 of the Plea Agreement states:

The Defendant also understands that should the sentencing judge decide not to accept any of the parties' recommendations, that decision is not a basis for withdrawing from this Plea Agreement or a basis for withdrawing this plea of guilty.

The last sentence of ¶ 8 (c) of the Plea Agreement states: "Therefore, the United States and the Defendant agree that the Defendant's final adjusted offense level would be 13." This statement is obviously contrary to the court's Offense Level findings with a substantially longer Guideline Range than the 33-41 months contemplated by the Government and the Defendant at the time of entering into the Plea Agreement. By

1 reason thereof, the court inquired of the Defendant and his experienced attorney, if they  
2 wished to move to withdraw from the Plea of Guilty previously entered. At the request  
3 of counsel the court recessed the sentencing hearing until Monday, September 8, 2008 to  
4 allow the Defendant and his attorney to discuss the matter.

5 During the weekend recess and the morning of September 8, 2008, the Defendant  
6 and his attorney reached a new agreement that the Plea Agreement would be modified to  
7 remove the provision contained in ¶ 17 which included a waiver of the Defendant's right  
8 to appeal "if the Court imposes a prison term within the guideline range . . ." At the  
9 resumption of the sentencing hearing at 11 a.m. on Monday, September 8, 2008, the  
10 Defendant and his attorney acknowledged that with this deletion, the Defendant wished  
11 to stand by his plea of guilty and proceed with sentencing.

12 At allocution, the Defendant, counsel for the Defendant, and the attorney for the  
13 Government all recommended to the court a sentence below the Sentencing Guideline  
14 range of 92-115 months. The Government did not seek a downward departure reduction  
15 in the Offense Level of 23 or Criminal History Category VI, but recommended a sentence  
16 in the range of three years. While recognizing the court's discretion to sentence below  
17 the Guideline range, in view of the Defendant's extensive and current history of crimes  
18 of violence resulting in both misdemeanor and felony convictions and Criminal History  
19 points of 22, more than 50% higher than the points need for the highest Criminal History  
20 Category of VI, the court rejected the requests for a sentence below the Guideline range  
21 and sentenced the Defendant to a term of imprisonment of 92 months, the low end of the  
22 Guideline range, to be followed by a term of Supervised Release of 3 years. The  
23 Defendant's juvenile history of violent and assaultive offenses are set forth in paragraphs  
24 36 through 54 of the Presentence Report. The adult assaultive, abusive, and violent  
25 offenses are set forth in paragraphs 70 through 99 of the Presentence Report.

26 In making the determination as to the appropriate sentence in this matter, the court  
27 considered, *inter alia*, the factors set forth in 18 U.S.C. § 3553(a)(2). Of substantial

1 import to the court was the necessity for not only just punishment, but also to afford  
2 adequate deterrence to criminal conduct and to protect the public from further crimes of  
3 the Defendant. The 92 month sentence will also afford the Defendant the opportunity for  
4 needed educational and vocational training along with mental health and drug counseling,  
5 analysis, and treatment.

6 The imposition of a sentence which substantially exceeds that recommended by the  
7 office of the United States Attorney is not an matter which has occurred often in this  
8 court's experience. The court reflected on that matter during the three days between the  
9 commencement of the sentencing hearing and the imposition of sentence. That reflection  
10 did not result in the court finding a basis for the imposition of a sentence in the range  
11 recommended to the court by the prosecution, but rather resulted in the court concluding  
12 that the Guideline sentence, also recommended by the Probation Officer, was the  
13 appropriate sentence.

14 The Clerk shall enter this Order and furnish copies to counsel.

15 Dated this 9th day of September, 2008.

16  
17 s/ Justin L. Quackenbush  
18 JUSTIN L. QUACKENBUSH  
19 SENIOR UNITED STATES DISTRICT JUDGE  
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